

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F510183

DENE M. HARDIN, EMPLOYEE

CLAIMANT

**HOLIDAY INN -- AIRPORT,
EMPLOYER**

RESPONDENT

**WAUSAU UNDERWRITERS INSURANCE
COMPANY, INSURANCE CARRIER**

RESPONDENT

OPINION FILED MARCH 27, 2006

Hearing before Administrative Law Judge Cynthia Estes Rogers on December 29, 2005, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Terence C. Jensen, Attorney at Law, Benton, Arkansas.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

A hearing was held on December 29, 2005, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employer-employee relationship on April 27, 2005. It was further stipulated that claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$100.00 for both temporary total disability (TTD) and permanent partial disability (PPD) benefits, based on an average weekly wage of \$150.00.

Claimant contends that she was injured on April 27, 2005, while employed with Heartland Hotel, also known as the Holiday Inn at the Airport. She contends that she slipped and fell, injuring her back, hips, spine, right leg, left hand, and has been suffering migraine headaches as a result of her injuries. At the hearing in this matter, claimant added a left shoulder and neck injury to the list of injuries she asserted in the prehearing order filed November 28, 2005.

Claimant first sought TTD benefits from August 29, 2005, (the date that she was dismissed from employment because the establishment closed), and continuing through October 15, 2005, when she obtained new employment. During the hearing, however, claimant amended her claim to that of temporary partial disability (TPD) during the period between August 29, 2005, and October 15, 2005, as she was receiving \$68.00 per week in unemployment benefits during this time. She also seeks temporary partial disability (TPD) benefits from October 15, 2005, and continuing through a date yet to be determined. Claimant further contends that she is entitled to medical benefits and attorney's fees.

Respondents controvert the claim in its entirety, contending that there are no objective findings to support claimant's claim and that claimant continued to work in a light-duty capacity until the business permanently closed on August 29, 2005.

STATEMENT OF THE CASE

Claimant is twenty-four years old and testified that she had worked part-time for respondent-employer as a waitress for approximately three years, while also attending college, majoring in drama and minoring in dance. She testified that, while working, she sustained injuries on April 27, 2005. She testified as follows:

I was going to get Ranch dressing for a customer because I was serving them food and they required it, and I had to go into the restaurant because that's where the salad bar was. I slipped and fell on my tailbone really hard, and my left leg went out from underneath me, my right leg hit the floor and went out in, like, the splits, and my left hand slammed the floor, which put all the pressure on my shoulder and my neck. I couldn't get up off the floor. I said repeatedly that I couldn't get up off the floor. There was a guy who had been cleaning the floors that helped me up off the floor. I said, "Where is the Wet Floor sign?" And he said he forgot to put it out.

Claimant testified that she felt pain in her lower back, in her left hip, and down her entire right leg from "probably around the buttocks area all the way down to [her] toes." She also claims she felt pain in her left shoulder all the way up to the top of the left side of her neck. She testified that she reported her injuries to "Darrell," who was the hotel manager. She also testified as follows:

I also had Darwin, who was the guy who helped me off of the floor who had mopped the floor and not put out the wet sign, be an eyewitness to the fall since he was the one that saw me fall and helped me up off the floor.

Neither Darwin nor Darrell were called as witnesses.

Claimant testified that she went to the emergency room the next day. No records of an emergency room visit were introduced into evidence. Medical records indicate, and claimant testified, that she saw Dr. Russell Burton, her primary care physician, on May 5, 2005. Dr. Burton's records of that date indicate as follows:

She slipped and fell at work injuring the right knee. She was seen at the ER in North Little Rock, evaluated, placed in a knee immobilizer and sent home. She was given Lorcet Plus for pain. She complains of pain in the left shoulder and left side of the neck as well as the back and right lower extremity. When she slipped apparently her right knee hyperextended and she actually fell to the floor almost in a splint (sic) type position.

I see no swelling to the knee and range of motion is normal. There is a popping of the patella though it does not sublux out of the patella groove. There is pain to palpation of the patella and the medial an (sic) lateral joint line. There is also pain to palpation of the posterior aspect of the knee. SLR is positive on the right. No paraspinous spasm in the lumbar spine region. There is tenderness to palpation of the trapezius muscle of the left side of the neck with fairly normal range of motion of the neck.

Knee Strain, Back Strain and Neck Strain from fall with associated contusion to the knee as well, *probably resolving.*

[Emphasis added.]

Dr. Burton additionally ordered an MRI of the lumbar spine and opined that claimant would not be able to return to work at that time, due to the nature of her job. However, claimant testified that she *did* continue working, although it was in a

lighter-duty capacity, and worked until the establishment closed permanently on August 29, 2005. Apparently, no tests were ordered in regard to her left hip and left shoulder and neck complaints.

Medical records indicate that claimant saw Dr. Burton again on June 2, 2005.

His notes of that date state as follows:

She continues to complain of pain in the left buttocks and also pain down the posterior aspect of the right lower extremity, from the thigh down to the foot. . . .

See results of *MRI recently done and normal. Reflexes of lower extremities symmetrical and normal. SLR strongly positive on the right at less than 45 degrees and negative on the left.* There is pain to palpation of the left buttocks below the SI joint.

Continued musculoskeletal pain of *uncertain etiology now some four month after the initial injury and a couple of months past the second injury.* MRI negative so this would not seem to be a radicular problem.

I cannot palpate any muscle spasms or pronounced muscle tightness or abnormal masse within the musculature to substantial (sic) her pain complaints. Therefore, I will send her to Dr. Saflen for chronic pain specialty evaluation for such things as reflex sympathetic dystrophy, etc.

[Emphasis added.]

Claimant admitted during her testimony that she had sustained a fall in the bathtub at her home a couple of months prior to this alleged work injury, injuring the

hamstring of her right leg. She admitted that she had worn a wrap on it when she worked, medicated it, and iced it. She testified:

I had fallen at home and I had went to the doctor several times and it was concluded that I had torn my hamstring and surrounding muscles.

She denied any other injuries sustained as a result of her fall in the bathtub at home and testified that the injuries she allegedly sustained on April 27, 2005, while working for respondent-employer, were “extremely different” than the hamstring injury, although she did admit that she was still having some problems with her hamstring in April of 2005.

Medical records reflect that claimant then began seeing Dr. Christopher Mocek on July 26, 2005. Dr. Mocek’s notes from that initial evaluation mention no work-related injury having occurred in April of 2005; in fact, Dr. Mocek’s notes reflect that the claimant had had the pain she complained of for eight months. His notes state, in pertinent part:

DISCUSSION: This patient is clearly having pain from lumbosacral strain and inflammation of the L5 and S1 nerve roots on the right. She could have an occult annular tear in the L5, S1 disc causing chemical inflammation of the nerve roots. *She has had persistent pain for 8 months* and we can try a lumbar epidural steroid injection L5, S1 on the right to treat the inflammation around the L5 and S1 nerve roots.

[Emphasis added.]

Claimant testified that she did have some epidural injections that did seem to help. She testified, however, that her pain is so intense that her life has changed dramatically. She testified that she continued working for respondent-employer until the establishment closed at the end of August of 2005. She then applied for and received unemployment benefits in the amount of \$68.00 per week until October 15, 2005, when she began working for another restaurant as a waitress.

She testified that she only worked at the new restaurant until November 23, 2005, because she was “struggling on the floor,” meaning that she could not keep up with the work requirements. She testified that between the pain and the medication she was taking, she was simply making too many mistakes and feared that she would be fired, so she quit. She testified that she now works at The Limited, a women’s clothing store, but that she only works about one day per week, earning approximately \$20.00 per week. She did admit that the few work hours she receives from The Limited, however, are not due to her alleged injuries, but are due to overstaffing on the part of The Limited.

Claimant testified that she began having migraine headaches approximately five to six months after the date she allegedly injured herself on April 27, 2005. She claims that Dr. Burton attributed those to the medication she was then taking, although nothing in this regard is mentioned in Dr. Burton’s notes. Both claimant and her mother testified that between the pain from the injuries she allegedly sustained

in April of 2005, and the migraine headaches she has since been suffering, her life has been dramatically changed, that she has gained a substantial amount of weight, and that she has suffered financially and has fallen behind in school.

FINDING OF FACT

Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury arising out of and during the course and scope of her employment on April 27, 2005, or that any work-related injury she may have sustained was the major cause of her condition.

DISCUSSION

In order to prove compensability of a claim, a claimant must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) the injury was caused by a specific incident, identifiable by time and place of occurrence; and (4) the injury must be established by medical evidence supported by objective findings. *See* Ark Code Ann. § 11-9-102(4)(A)(i); 11-9-102(4)(D); 11-9-102(4)(E)(i).

Objective findings are those that cannot come under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(16)(A)(I). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72

S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.* Further, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Smith-Blair, Inc. v. Jones, supra; Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this case, there are simply no objective findings to support claimant's claim. Dr. Burton, in a letter to claimant's counsel, points to his notes of May 5, 2005, as

“objective,” but his assessment of that date was clearly based upon claimant’s subjective history, as she reported it to him. All of the tests he conducted were normal and negative, with the exception of the straight-leg-raising test, which was positive. However, the law is clear that straight-leg-raising tests cannot be a basis for objective findings for purposes of determining compensability. *See Mays v. Alumnitec, Inc.*, 76 Ark. App. 274, 64 S.W.3d 772 (2001).

Moreover, when he saw claimant on June 2, 2005, Dr. Burton noted that the etiology of her continued pain was “uncertain,” as it had been four months since the “initial injury” and a couple of months “past the second injury.” Likewise, Dr. Mocek noted on July 26, 2005, that claimant had “had persistent pain for [eight] months,” and found only one objective finding to demonstrate that she in fact had an injury: “Positive straight leg raising test.” Again, this cannot be the basis for an objective finding for compensability.

In short, claimant has simply failed to prove by a preponderance of the credible evidence that she sustained a compensable injury on April 27, 2005, or that any injury she did sustain was the major cause of her need for treatment. For all of the above-stated reasons, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge